

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHAD RAPHAEL HERNANDEZ,)	
)	
Plaintiff,)	
)	
-v.)	Case No. CIV-07-91-HE
)	
GRADY COUNTY DETENTION)	
CENTER,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing pro se, brings this action alleging violations of his constitutional rights. This matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). Because Plaintiff has failed to cure certain deficiencies pursuant to an order of this Court, the undersigned recommends that the complaint be dismissed without prejudice.

By Order of this Court dated March 6, 2007, Plaintiff was ordered to cure certain deficiencies with respect to his complaint. By letter dated March 12, 2007, Plaintiff advised the Court that he was being transferred to another facility out-of-state, that he would not be able to write for about a month and that his mail should be directed to another address. By order dated April 3, 2007, the deadline to cure Plaintiff's complaint was *sua sponte* extended until May 3, 2007.

A review of the Court file reveals that as of this date, Plaintiff has not cured the deficiency as ordered, requested an extension of time within which to do so, nor demonstrated good cause for his failure to respond to the Court's order. Plaintiff's failure to comply with this Court's order combined with the Court's need to manage and control

its caseload warrants dismissal of the complaint without prejudice to refiling. *See Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992) (noting court has repeatedly upheld dismissals in situations where the parties have neglected their cases or refused to obey court orders). Therefore, the undersigned recommends that this action be dismissed without prejudice to refiling.

RECOMMENDATION

Accordingly, because Plaintiff has failed to comply with this Court's order, it is recommended that this action be dismissed without prejudice to refiling. Plaintiff is advised that any objection to this Report and Recommendation must be filed with the Clerk of this Court by the 31st day of May, 2007, in accordance with 28 U.S.C. §636 and Local Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 11th day of May, 2007.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE